

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  TWIN CITY CAPITAL, d/b/a SMALL BUSINESS AMERICA,  Respondent.	DOCKET NO. FCU-03-62
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**ORDER DOCKETING FOR FORMAL PROCEEDING  
AND REQUESTING RESPONSE**

(Issued January 27, 2004)

On December 30, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-224, involving Twin City Capital, d/b/a Small Business America (Small Business America), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which is a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On October 6, 2003, Ms. Natalie Myers filed a complaint with the Board on behalf of Jaspering Electric, Inc. (Jaspering), alleging that Jaspering's subscribed long distance service had been changed from Qwest to Small Business America without proper authorization. Board staff identified the matter as C-03-224 and, pursuant to Board rules, on October 7, 2003, forwarded the complaint to Small Business America for response.

Small Business America responded to the complaint on November 7, 2003, stating that its records showed that one of its sales agents spoke with Ms. Myers on September 23, 2003, regarding changing Jaspering's telephone service to Small Business America and that Ms. Myers agreed to switch Jaspering's long distance service. Small Business America also stated that a third-party verification was obtained to authenticate the sale. Small Business America provided a copy of the third-party verification and stated that it had issued a credit of \$56.56 plus tax to Jaspering.

On November 7, 2003, Board staff forwarded a copy of the third-party verification to Ms. Myers asking that she review the tape and respond in writing by November 20, 2003. Board staff received Ms. Myers' response on November 20, 2003, wherein she verified that her voice was on the tape, but denied that she agreed to a rate of \$0.19 per minute. In addition, Ms. Myers stated that she believed the sales agent for Small Business America misrepresented herself to Ms. Myers by stating that she worked for Qwest Corporation (Qwest).

On December 17, 2003, Board staff issued a proposed resolution describing these events and proposing that the credit offered by Small Business America represented a fair resolution of the situation. No party other than Consumer Advocate has challenged the staff's proposed resolution.

In its December 30, 2003, petition, Consumer Advocate asserts that the proposed resolution is not supported by the facts of the underlying complaint and that sufficient reasons exist to merit an investigation into the matter. In addition, Consumer Advocate asserts that other slamming complaints received by Board staff have named Small Business America as the alleged violating company. Consumer Advocate requests that the Board docket this complaint for a formal proceeding and impose civil penalties on Small Business America. Small Business America has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date as well as the additional slamming complaints made against Small Business America and finds that there is sufficient information to warrant further investigation in this matter. The Board will delay establishing a procedural schedule until March 29, 2004, and allow Small Business America the opportunity to respond to the allegations raised in Consumer Advocate's petition.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 30, 2003, identified as Docket No. FCU-03-62, is granted and docketed for formal proceeding.

2. Twin City Capital, d/b/a Small Business America, is directed to file a response to Consumer Advocate's petition on or before March 29, 2004.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27<sup>th</sup> day of January, 2004.